IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1914 of 2005 (O&M)
Date of Decision :17.9.2007

Gurrattan Pal Singh

….Appellant

Vs.

Avtar Singh and others

…. Respondents

Present: Mr.Vijay Lath, Advocate and
Mr.Naveen Sharma, Advocate for the appellant.

Vinod K.Sharma, (Oral).

This Regular Second Appeal has been filed against the judgments and decrees passed by the learned lower Courts below vide which suit filed by the plaintiff-appellant for possession/joint possession was ordered to be dismissed.

The appellant-plaintiff filed a suit for joint possession on the plea that the sale deeds dated 16.1.1973 and 26.3.1975 executed by father of the plaintiff-appellant in favour of defendants Nos.1 to 3 were illegal, null and void having no effect on the rights of the plaintiff and defendants No.4 to 7. By way of suit, the exchange of suit land by defendants No.1 to 3 with defendants No.8 to 11 was also challenged. It is pertinent to mention here that prior to the filing of the suit, defendant No.4 father of the plaintiff had also challenged the sale deed. However, having failed to prove the said sale deed challenged in the suit as invalid, the trial court up-held the said sale deeds.

Learned Courts below have recorded a finding that the suit land was a Joint Hindu Family and coparcenary property of the plaintiff and defendants No.4 to 7. However, both the Courts below have recorded a concurrent finding of fact that the sale of the land in question was for legal necessity.

Learned Courts below on the basis of terms and conditions mentioned in the sale deed, came to the conclusion that money was required for getting the property redeemed from the mortgagee. It has been held by the Courts below that sale of land was for legal necessity. The Courts below have also noticed the fact that after the sale, the marriage of two daughters of respondent No.4 took place in the year 1976 and two daughters in the year 1978. The contention of learned counsel that no positive evidence was brought on record to this effect that money was actually spent on the marriage of the sisters of the plaintiff, cannot be accepted in view of finding of fact that the sale was effected to discharge the family liability, and this fact was mentioned in the sale deed.

Learned counsel for the appellant has challenged the decrees passed by the learned Courts below on the plea that it was incumbent upon the defendant-respondents i.e. vendees to prove that bona fide enquiry was made to show that agreement entered into by defendant No.4 with them was for legal necessity. The contention of the learned counsel for the appellant is that as no such enquiry was made. therefore, in view of the law laid down by this Court in case of **Hem Raj and others vs. Mehtab Singh and others, PLR 641**, the judgments and decrees passed by learned courts below cannot be sustained.

However, I find no force in the contention of learned counsel for the appellant. In present case, the legal necessity has been mentioned in the sale deeds itself. Further it has been proved on record that part of sale consideration was actually deducted for payment to mortgagee. Consequently, there is no error or illegality in the findings recorded by the learned Courts below which may call for interference by this Court in Regular Second Appeal. No question of law muchless substantial question of law arises for consideration by this Court.

Dismissed.

[Vinod K.Sharma]
Judge

17.09.2007
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